

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

CAPITOL VIEW TOWER, LP
(F/K/A LEW APTS, LP),
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 21C 0161 &
22C 0235

DECISION AND ORDER
REVERSING THE DECISIONS
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

For the Appellant:

Shawn James,
Smith, Slusky, Pohren
& Rogers

For the Appellee:

Daniel J. Zieg,
Deputy Lancaster County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keettle. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located at 1700 J. Street, Lincoln, Lancaster County, Nebraska, improved with a 9-story, 105-unit, low-income housing apartment building built in 1977. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 5.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (County Assessor) determined the assessed value of the Subject Property was \$4,544,800 for tax year

2021¹ and \$5,112,900 for tax year 2022.² Capitol View Tower, LP (f/k/a LEW Apts, LP) (the Taxpayer) protested these assessments to the Lancaster County Board of Equalization (the County Board). The Taxpayer requested an assessed value of \$2,817,300 for tax year 2021³ and \$2,882,800 for tax year 2022.⁴ The County Board determined the taxable value of the Subject Property for tax year 2021 was \$4,544,800⁵ and \$5,112,900 for tax year 2022.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 5, 2023. Prior to the hearing the parties exchanged exhibits as ordered by the Commission. Exhibits 1-34 were received into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁷ When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.⁸ The first involves a presumption that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁹ That presumption remains until there is competent evidence to the contrary

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 8:1.

⁴ Exhibit 3:4.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁸ *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, ____ N.W.3d ____ (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

⁹ *Pinnacle Enters.*, 320 Neb. at 309, ____ N.W.3d at ____ (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.¹⁰

The second burden of proof requires that from that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented.¹¹ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.¹²

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.¹³ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁴

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁵ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹⁶

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.¹⁷ The Commission may consider all

¹⁰ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

¹¹ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

¹² *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

¹³ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁴ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___; *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁵ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value) abrogated on other grounds by *Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹⁶ *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹⁷ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁸ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.²⁰

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²¹

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.²² Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²³ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.²⁴ All real property in

¹⁸ *Id.*

¹⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²² *Id.* (citing Neb. Rev. Stat. § 77-1371).

²³ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

²⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.²⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁶

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.²⁷ “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.”²⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁹ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.³⁰ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³¹

If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere

²⁵ See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

²⁶ Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2020).

²⁷ Neb. Const., art. VIII, § 1.

²⁸ *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

³⁰ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³¹ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

errors of judgment.³² There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³³

V. FINDINGS OF FACT

A. Testimony of Thomas Kubert

Thomas Kubert testified on behalf of the Taxpayer. Kubert was a Certified General Appraiser in Nebraska since 1995, licensed to appraise commercial real estate.³⁴ Kubert was also a licensed Nebraska real estate broker since 2007. Kubert identified the Subject Property as subsidized housing under Section 8 through the Department of Housing and Urban Development (HUD).³⁵

Kubert appraised the Subject Property for tax years 2021³⁶ and 2022.³⁷ He testified he relied on the sales comparison approach and the income approach in appraising the Subject Property.³⁸ Kubert also considered the cost approach, but he opined the need for significant depreciation would undermine the reliability of that approach in these circumstances.³⁹

In his sales comparison approach, Kubert reviewed four comparable sales for the 2021 appraisal and five comparable sales for the 2022 appraisal. He made adjustments to the comparables to account for differences in age, condition, size, and other factors.⁴⁰ For tax year 2021, his sales comparison analysis yielded a value of \$3,942,100 when considering the total square footage and \$3,952,000 based upon the

³² *Pinnacle Enters.*, 320 Neb. at 310, ___ N.W.2d at ___ (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

³⁴ Exhibit 18:57; Exhibit 33:57.

³⁵ Exhibit 18:2; Exhibit 33:2.

³⁶ Exhibit 18.

³⁷ Exhibit 33.

³⁸ See also Exhibit 18:38-39; Exhibit 33:38-39.

³⁹ See also Exhibit 18:38-39; Exhibit 33:38-39.

⁴⁰ Exhibit 18:42-44; Exhibit 33:42-44.

number of rental units.⁴¹ Kubert determined the retrospective actual value for tax year 2021 under the sales comparison approach was \$3,952,000.⁴²

For tax year 2022, Kubert's sales comparison approach analysis yielded a value of \$4,060,700 when considering the total square footage and \$4,056,000 based upon the number of rental units.⁴³ Kubert determined the retrospective actual value for tax year 2022 under the sales comparison approach was \$4,056,000.⁴⁴

Kubert's income approach analysis in both tax years focused upon five market comparables subject to similar Section 8 restrictions.⁴⁵ In discussing the Subject Property, Kubert testified the vacancy and expense rates were higher than normal due to its status as a Section 8 Property, which can limit the net operating income of the Subject Property. However, he did not consider the actual income of the Subject Property, instead analyzing the stabilized market rental rates for each tax year.⁴⁶

For those comparable properties not subject to Section 8 restrictions, Kubert testified in relation to the 2021 appraisal that he used an approximately 13% expense adjustment to the comparable properties to adjust for the differences in utilities paid by the tenants in the comparable properties, but which were included in the leases for the Subject Property.⁴⁷ This was to account for typical market rent where the tenants pay their own utilities and was based upon the total 2021 utilities expenses for the Subject Property.⁴⁸ For tax year 2022, Kubert estimated a 12% adjustment.⁴⁹ Kubert's income approach analysis resulted in a value of \$3,948,700⁵⁰ for tax year 2021 and

⁴¹ Exhibit 18:at 18:44.

⁴² *Id.*

⁴³ Exhibit 33:44.

⁴⁴ *Id.*

⁴⁵ Exhibit 18:46; Exhibit 33:46.

⁴⁶ Exhibit 18:12, 45-47; Exhibit 33:12, 45-47.

⁴⁷ See also Exhibit 18:46.

⁴⁸ *Id.*

⁴⁹ Exhibit 33:46.

⁵⁰ Exhibit 18:54.

\$3,967,400 for tax year 2022.⁵¹

Kubert's reconciliation between the sales comparison approach and the income approach resulted in his final opinion of value of \$3,950,000 for tax year 2021,⁵² and of \$3,970,000 for tax year 2022.⁵³

B. Testimony of Philip Hughes

Phillip Hughes was called to testify on behalf of the County Board. Hughes served as a commercial appraiser for the Lancaster County Assessor and had approximately two years of experience.⁵⁴ Hughes was not involved in the assessment of the Subject Property for tax year 2021. He was not a licensed appraiser but testified he had previously held a Nebraska real estate agent's license.⁵⁵ He testified he had performed the 2022 assessment for the County Assessor and had most recently inspected the Subject Property in approximately May or June 2022. Hughes also identified the Subject Property as a Section 8 Housing and Urban Development (HUD) property with a short time remaining on the HUD contract.

In describing the assessment of the Subject Property, Hughes testified the comparable properties used in the assessment were only used to build the County Assessor's income model. Hughes, like Kubert, did not account for income based upon Section 8 vouchers in the 2022 assessment. In his testimony, Hughes analyzed the sales of similar properties from the Kubert appraisals. Hughes indicated only general familiarity with the comparable properties in the Kubert appraisals except for one of the comparable properties in Kubert's tax year 2021 appraisal (1215 A Street, marked as "Sale 3").

Hughes testified the Sale 3 property was in worse condition at the time of its April 13, 2020, sale date than the Subject Property as of the assessment date. Hughes did not specify whether he meant the 2021 or

⁵¹ Exhibit 33:54.

⁵² Exhibit 18:3, 56.

⁵³ Exhibit 33:3, 56.

⁵⁴ Exhibit 6:2. In April 2022, Hughes became an Appraiser III for the County Assessor.

⁵⁵ *Id.*

2022 assessment date. Again, Hughes did not participate in the 2021 assessment. Hughes separately indicated his familiarity with the Sale 3 property came from having worked for two different owners of that property. Prior to his work in the County Assessor's Office, Hughes had been an asset manager for various companies.⁵⁶ Hughes testified he took care of investor's properties, looked at properties to buy or sell, and took part in the day-to-day operations. When asked if his prior experience included appraisal work, Hughes said he did not do formal appraisals but evaluated risk factors and potential for income.

VI. ANALYSIS

Kubert asserted in his appraisal reports that the appraisals were completed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).⁵⁷ As an independent licensed appraiser using professionally accepted methods of appraisal, his opinions of value found in the appraisal reports constitute competent evidence sufficient to rebut the presumption that the County Board determinations of value were correct.⁵⁸ Kubert's reconciled value for tax year 2021 was \$3,950,000.⁵⁹ His reconciled value for tax year 2022 was \$3,970,000.⁶⁰

The Commission gives great weight to the Kubert appraisals and finds the Kubert appraisals appropriately considered the fee simple value of the Subject Property, particularly given the fact the HUD contract was very near completion. We also find Kubert's appraisal opinions of value to constitute clear and convincing evidence that the County Board's determinations of taxable value of \$4,544,800⁶¹ for tax year 2021 and of \$5,112,900 for tax year 2022⁶² were arbitrary or unreasonable.

⁵⁶ Exhibit 6:2.

⁵⁷ Exhibit 18:3; Exhibit 33:3

⁵⁸ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

⁵⁹ Exhibit 18:55-56.

⁶⁰ Exhibit 33:55-56.

⁶¹ Exhibit 1.

⁶² Exhibit 2.

VII. CONCLUSIONS OF LAW

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the values of the Subject Property for tax years 2021 and 2022 are vacated and reversed.
2. The assessed value of the Subject Property for tax year 2021 is:

Total **\$ 3,950,000**

3. The assessed value of the Subject Property for tax year 2022 is:

Total **\$ 3,970,000**

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2021 and 2022.
8. This Decision and Order is effective for purposes of appeal on January 22, 2026.⁶³

⁶³ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.

Signed and Sealed: January 22, 2026

SEAL



Robert W. Hotz, Commissioner

Steven A. Keettle, Commissioner